

MEMORANDUM

TO: Legislative Joint Mental Health Oversight Committee
FROM: Wendy Beininger, A.A.G.
Chief Counsel, Division of Mental Health

RE: United States Department of Justice Investigation

DATE: July 12, 2005

The Department of Justice (“DOJ”) conducted its investigation of Vermont State Hospital (“VSH”) pursuant to its authority under the Civil Rights of Institutionalized Persons Act (“CRIPA”). Following the investigation, DOJ Attorney William Maddox reviewed reports from the two DOJ experts as well as the documents that VSH provided to them. The DOJ has issued its formal Findings. The Findings contain allegations that VSH is violating the federal statutory and constitutional rights of patients and list areas that require change in order to remedy this situation. The Findings letter also includes minimal remedial measures which the DOJ asserts will remedy these deficiencies.

The Findings do *not have any automatic legal authority, but form the basis of the law suit*. The State has the option of cooperating or litigating. The State has clearly informed DOJ that we intend to cooperate with them and will enter into negotiations. The State of Vermont remains committed to improving conditions and treatment of patients at VSH. We have been receptive to the recommendations shared at the exit interview, and have incorporated many of them into the quality improvement plan at VSH. We will illustrate the changes that have already been made, and come to an agreement about which of the recommended changes we will agree to. The following are the possible outcomes:

1. “Informal” Agreement Between the DOJ and VSH: This would be a detailed agreement between the parties outlining the changes that VSH agrees to make and setting out timelines by which we will have completed them. There is no court involvement. The parties agree to a compliance monitoring method, which generally uses a team of independent mental health experts.

This is the optimal result, and the one that the State will actively pursue. To that end, in the next couple of weeks, the State will submit a notice to the DOJ that it intends to negotiate, and sets out the basis that an informal agreement is appropriate.

2. Formal Settlement: In this scenario, the DOJ files a complaint in Federal District Court alleging violations of the constitution and federal law. We agree with them to the same type of detailed agreement mentioned above. Based on this agreement, the DOJ stipulates that it will not to pursue the complaint and will dismiss it when we complete the agreed upon changes. This is the result most often used by the DOJ. This “conditional dismissal” does give DOJ a good amount of leverage with us, but does not involve the court directly.
3. Consent Decree: This is the worst-case scenario. In this instance, the DOJ files a complaint in federal court and the only way that it agrees to resolve it is through a Consent Decree. The Consent Decree would contain the same sorts of agreements and time frames as the Formal Settlement. However, the Court then has the ability to oversee the changes and takes an active role. It is the Court’s decision (as opposed to DOJ) when to terminate the Consent decree, and this can take many, many years.